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VIRLYNN TINNELL  
SUPERIOR COURT CLERK

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MOHAVE**

STATE OF ARIZONA;

Plaintiff,

vs.

JUSTIN JAMES RECTOR,

Defendant.

No. CR-2014-1193

**RESPONSE TO DEFENDANT'S  
MOTION IN LIMINE: "NEXUS" OR  
CAUSATION**

COMES NOW, the State of Arizona, by the Mohave County Attorney and through the undersigned deputy, Gregory A. McPhillips, respectfully requests defendant's motion in limine nexus or causation be denied.

**Issues**

1. The Court will not make a decision as to appropriate argument of mitigating factors where the issue is not ripe because defendant has failed to disclose any mitigating factors.
2. The Court will not preclude State questioning of mitigation witnesses or argument on mitigation because no case law supports such a limitation; rather case law supports such conduct.

**Defendant's Motion is not ripe**

Defendant requests the court to preclude the State's questioning and argument about the undisclosed mitigation. As of the date of this response, defendant has not disclosed any mitigation to the State or Court. Defendant asks the court to preclude the

1 State's questioning, of undisclosed witnesses, and argument about undisclosed  
2 mitigation. Defendant is asking the court to make this decision—blindfolded—without  
3 knowing any fact. The Court cannot make a decision as to appropriate argument of  
4 mitigating factors where the defense has failed to disclose mitigating factors. Defendant's  
5 argument is not ripe.

6 Defendant's motion in limine nexus or causation should be denied.

7 **No case law supports defendant's request to preclude the State's questioning or**  
8 **argument about mitigation**

9 Defendant requests the court to preclude the State's questioning and argument  
10 about the undisclosed mitigation. As support for this proposition, defendant 1) cites  
11 *Tennard v. Dretke*,<sup>1</sup> and 2) asks the Trial Court to disobey precedent of the Arizona  
12 Supreme Court in *State v. Anderson*.<sup>2</sup> The holdings of the two cases are not in conflict.  
13 *Tennard* is distinguishable from defendant's proposition requesting the court to preclude  
14 the State's questioning and argument about the undisclosed mitigation. As such, this  
15 court will follow the holding of the Arizona Supreme Court in *State v. Anderson*.

16 *Tennard* states that the "State cannot bar "the consideration of ... evidence if the  
17 sentencer could reasonably find that it warrants a sentence less than death."<sup>3</sup> The  
18 context of that holding is very important. It is important to note that *Tennard* is  
19 distinguishable from the instant case because *Tennard* was decided by the jury pursuant  
20 to Texas law. Texas law did not instruct the jurors to consider mitigation. The jury was  
21 instructed to consider the appropriate punishment by answering the two "special issues":  
22 1) Did defendant caused the death deliberately and 2) Is there a probability that the  
23 defendant would commit further criminal acts of violence.<sup>4</sup> It is in the context of those  
24 instructions—that do not allow for mitigation—that the prosecutor that defendant's

25 <sup>1</sup> *Tennard v. Dretke*, 542 U.S. 274 (2004)

<sup>2</sup> *State v. Anderson*, 210 Ariz. 327 (2005).

<sup>3</sup> *Tennard v. Dretke*, 542 U.S. 274, 285, 124 S. Ct. 2562, 2570, 159 L. Ed. 2d 384 (2004); citing *McKoy v. North Carolina*, 494 U.S. 433, 441, 110 S.Ct. 1227, 108 L.Ed.2d 369 (1990).

<sup>4</sup> *Tennard v. Dretke*, 542 U.S. 274, 277-78, 124 S. Ct. 2562, 2566, 159 L. Ed. 2d 384 (2004)

1 mitigation—low IQ—was not relevant. The U.S. Supreme Court took issue not with what  
2 the prosecutor did but rather Texas law limiting consideration of mitigation.

3 The instant case is distinguishable from what happened in *Tennard* because  
4 Arizona law specifically allows the jury to consider mitigation. It is in the context of  
5 Arizona law, and the decision in *Tennard*, that Arizona Supreme Court decided *State v.*  
6 *Anderson*. The Arizona Supreme Court held that:

7  
8 While *Eddings* and various other Supreme Court decisions dictate a liberal rule of  
9 *admissibility* for mitigating evidence, they still leave it to the sentencer to  
10 “determine the weight to be given to relevant mitigating evidence.” *Eddings*, 455  
11 U.S. at 114–15, 102 S.Ct. 869. Once the jury has heard all of the defendant's  
12 mitigation evidence, ***there is no constitutional prohibition against the State***  
13 ***arguing that the evidence is not particularly relevant or that it is entitled to***  
14 ***little weight***. The prosecutor's various comments and questions here simply went  
15 to the weight of Anderson's mitigation evidence and were not improper.<sup>5</sup>

16 Defendant now asks this court to ignore precedent of the Arizona Supreme Court. Yet  
17 that decision is not in conflict with the decision of the U.S. Supreme Court in *Tennard*.

18 Said another way, defendant is asking that the Trial Court preclude the State from  
19 confronting any mitigation witness or questioning the validity of that evidence. Such a  
20 request strikes at the very heart of our adversarial system of justice. There is no  
21 constitutional prohibition against the State arguing that the evidence is not particularly  
22 relevant or that it is entitled to little weight. As such, there is no basis for the court to  
23 create such an unfair hurdle for the State in this case.

24 Defendant's motion in limine nexus or causation is not supported by any case law  
25 and should be denied.

### 26 Conclusion

27 The Court cannot make a decision as to appropriate argument of mitigating factors  
28 where the defense has failed to disclose mitigating factors. Defendant's argument is not  
29 ripe. As such, defendant's motion in limine nexus or causation should be denied.

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<sup>5</sup> *State v. Anderson*, 210 Ariz. 327, 350, 111 P.3d 369, 392 supplemented, 211 Ariz. 59, 116 P.3d 1219 (2005)  
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1 The Court will not limit State argument and questioning where no case law  
2 supports such a limitation. There is no constitutional prohibition against the State arguing  
3 that the evidence is not particularly relevant or that it is entitled to little weight. As such,  
4 defendant's motion in limine nexus or causation should be denied.

5 RESPECTFULLY SUBMITTED THIS 20TH DAY OF MAY, 2015.

6 MOHAVE COUNTY ATTORNEY  
7 MATTHEW J. SMITH

8   
9 By \_\_\_\_\_  
10 DEPUTY COUNTY ATTORNEY  
11 GREGORY A. MCPHILLIPS

12 A copy of the foregoing  
13 sent this same day to:

14 HONORABLE LEE F. JANTZEN  
15 SUPERIOR COURT JUDGE

16 RONALD S. GILLES  
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21 By   
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